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SOLICITORS' JOURNAL

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CURRENT TOPICS

The Duty to Inform

LAST week there appeared in the papers some extracts from a letter sent by the PRESIDENT of The Law Society to provincial law societies. We have not seen the full text of the letter and therefore cannot comment in detail. In general, however, it appears from the published extracts that the President has raised the moral question of how far and at what stage it is the duty of a solicitor, who suspects that one of his brethren is or is about to be guilty of professional misconduct, to inform the Council of The Law Society of his suspicions. We assume that, once a solicitor has definite knowledge of an offence, his duty is clear, however distasteful it may be. The President's letter, as reported in the press, stressed that a number of heavy claims against the compensation fund might have been much less had the Council received earlier warning. In other words, someone who has definite knowledge should say so early rather than late. The real moral difficulty is where there is suspicion but no knowledge, where there is delay in producing accounts and documents, where unsatisfactory explanations are given of facts calling for inquiry, where peccadilloes enlarge themselves gradually into crimes. We doubt whether a moral question of this kind is capable of being resolved by general guidance. Each one of us must decide for himself whether any suspicions he may have are so strong as to overcome his natural repugnance to informing against a professional colleague. It may be necessary for us on occasion to summon up enough moral courage to confront the suspect face to face. At all events, let us not be under any illusions about the criminality of actions which result in solicitors being struck off the rolls.

Street Offences Bill

IT may be that by the time this issue appears the Government will have yielded to the great and growing body of opinion which believes that the Street Offences Bill is too harshly drawn so far as the offence of soliciting is concerned. We agree with most of the views contained in the memorandum put forward by the Church of England Moral Welfare Council which achieved the signal distinction of having devoted to it a first leader in *The Times*. In particular, as the purpose of the Bill in this respect is to deal with the question of public nuisance, we agree in principle with the recommendation that the Bill should require the police, before bringing a first charge of soliciting, to give at least two formal cautions on separate days, one being a caution at a police station. It is difficult to argue in principle in favour of bringing criminal charges on extra-judicial cautions. In

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this country we have always resisted the idea that the police should be able to build up the elements of a criminal charge by their own administrative action not subject to judicial appeal. Yet in good sense we must admit that some of the devices to which we resort in order to obtain a conviction, for example, for loitering with intent to commit a felony, are artificial. It is a sign of confidence to admit exceptions to a rule and we think that this is a case for an exception. We do not know whether it would be possible to allow a woman cautioned, at her option, to appeal to the magistrates against the caution itself, but it is worth considering.

Regulations concerning Agriculture

THE first batch of regulations made under, *inter alia*, the Agriculture Act, 1958, have now been published and came into operation on 26th January. The Agriculture Act, 1958 (Appointed Day) (England and Wales) Order, 1959 (S.I. 1959 No. 80) named that date as the "appointed day" under the Act. New rules of procedure for agricultural land tribunals are prescribed by the Agricultural Land Tribunals and Notices to Quit Order, 1959 (S.I. 1959 No. 81). These cover such topics as form of application to the tribunal and reply, general provisions in relation thereto, hearings, evidence, decisions of the tribunal and references to the High Court. The Order requires certain questions, relating to restrictions on operation of notices to quit an agricultural holding, to be determined by arbitration; it also provides for the extension of the time within which counter-notices may be served and for the suspension and postponement of the operation of notices to quit when proceedings are taken. Pursuant to s. 5 of the Agriculture Act, 1958, transferring to the Lord Chancellor certain functions of the Minister of Agriculture, Fisheries and Food in relation to agricultural land tribunals, the Agriculture (Areas for Agricultural Land Tribunals) Order, 1959 (S.I. 1959 No. 83), made by the Lord Chancellor, with effect from 26th January, consolidates without alteration the provisions previously made by the Minister for constituting areas in England and Wales for agricultural land tribunals. The Agriculture (Control of Notices to Quit) (Service Men) Order, 1959 (S.I. 1959 No. 82) and the Reserve and Auxiliary Forces (Agricultural Tenants) Regulations, 1959 (S.I. 1959 No. 84) implement the requirements of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, that, in certain circumstances, a service man who is a tenant of an agricultural holding must be given special protection in addition to that given by the Agricultural Holdings Act, 1948. We hope to publish an article dealing with these new orders and regulations at an early date.

Highway Law

THE Committee on Consolidation of Highway Law have finished their labours and accompanied their report with a massive draft Bill which the Government have introduced into the House of Lords. The intention appears to be to pass this consolidation Bill into law and then to amend it afterwards. While we agree that it is most necessary to know what the law is before we begin changing it, we think that we might do without the intervening stage of a consolidation Act and proceed, though necessarily with some delay, direct to a new amending Bill. A few minor amendments are contained in the present Bill, of which the most notable is the passing of "the inhabitants at large" and the possibility of indicting them.

Unqualified Midwives

CHILDREN do not always select the most convenient time or place to be born and it is not uncommon to read of the attendance of an unqualified person upon a woman in childbirth on a train or a bus, or even in an aeroplane. It is unusual, however, to learn of the prosecution of a person without qualifications in this field for helping a woman to deliver her child, yet the court at Bury St. Edmunds was recently confronted with such a case. A wife decided to dispense with medical attention and to rely on her husband as a midwife. It appears that she adopted this course because the family doctor objected to her husband being present at the birth of her child and there was, therefore, no question of the husband having rendered assistance to his wife in an emergency, although he maintained subsequently that his wife's decision "forced" him to assume responsibility for the delivery. We assume that the prosecution was brought under s. 9 of the Midwives Act, 1951, which provides: "If a person, being either a male person or a woman who is not a certified midwife, attends a woman in childbirth otherwise than under the direction and personal supervision of a duly qualified medical practitioner, that person shall, unless he or she satisfies the court that the attention was given in a case of sudden or urgent necessity, be liable on summary conviction to a fine not exceeding £10." The section stipulates that its provisions are not to apply to persons who, while undergoing training with a view to becoming a duly qualified medical practitioner or certified midwife, attend a woman in childbirth as part of a course of practical instruction in midwifery recognised by the General Medical Council or the Central Midwives Board, and s. 35 safeguards duly qualified medical practitioners. In the case in question the husband pleaded guilty to the offence but was conditionally discharged.

Nullity: Approbation

IT may be an answer to a suit for nullity of marriage that the marriage has been approbated, with full knowledge of the facts and of the law, by the party seeking relief. As Lord Watson found in *G.* v. *M.* (1885), 10 App. Cas. 171, there is a "rule in the law of England that in a suit for nullity of marriage there may be facts and circumstances proved which so plainly imply, on the part of the complaining spouse, a recognition of the existence and validity of the marriage, as to render it most inequitable and contrary to public policy that he or she should be permitted to go on to challenge it with effect." In *Copham (otherwise Dobbin)* v. *Copham* (1959), *The Times*, 15th January, a husband maintained that his wife had approbated the marriage and therefore that she should be denied a decree of nullity on the ground that the marriage had never been consummated. He based this contention on two grounds, firstly, that the wife had taken out a summons under s. 17 of the Married Women's Property Act, 1882, after presenting her petition, and secondly, that from 1948 to 1956 she had continued to live with him, to all outward appearances, as a wife. However, DAVIES, J., could not accept the husband's submissions and held that the wife's action in taking proceedings under s. 17 was not inconsistent with her seeking a decree of nullity. As far as the second argument was concerned, his lordship found that throughout the eight years the wife had remained in protest against the situation and there was evidence, which the court accepted, that she had been positively misinformed by a Roman Catholic priest as to the legal remedy available to her.

THE LEGAL ADVICE REGULATIONS—I

NEARLY ten years have passed since the July day when a Commission signified the Royal Assent to the Legal Aid and Advice Act, 1949. King George the Sixth still lived: the Lords still sat in the King's Robing Room: the pound had not been devalued. Ministers, and especially Sir Stafford Cripps, were haunted by free wigs and spectacles and there was a general determination, particularly in the Treasury, that any further ventures into new and improved social services should be, to say the least, circumspect. In the result the implementation of the Act has been gradual. Nevertheless, in the words of Longfellow, " Though the mills of God grind slowly, yet they grind exceeding small."

Section 7 of the Legal Aid and Advice Act, 1949

Section 7 (2) of the 1949 Act provides simply that " Legal advice shall consist of oral advice on legal questions given by a solicitor employed whole-time or part-time for the purpose and shall include help in preparing an application for legal aid . . ." With that, darkness descended on s. 7, except that every so often the Lord Chancellor's Advisory Committee, the National Council of Social Service and other persons and bodies interested in the subject kept alive a weak flame. Nearly five years ago there appeared in these columns an article suggesting an entirely fresh approach. Instead of a corps of peripatetic salaried solicitors we suggested that legal advice to those unable to pay for it in the ordinary way should be given by solicitors in private practice provided that some means could be evolved of arranging for payment. We further suggested that it would be a good idea for solicitors to make it known that they are willing to advise for quite a small fee without the client undertaking any unknown financial obligation. Since that time thought has proceeded on these lines and on 2nd March next the important subsections of s. 7 will come into force, together with the sections of the Act relating to regulations, secrecy, prosecution of offences and interpretation so far as they relate to legal advice (Legal Aid and Advice Act, 1949 (Commencement No. 6) Order, 1959: S.I. 1959 No. 46 (C. 1)). At the same time as he brought s. 7 into force, the Lord Chancellor made the Legal Advice Regulations, 1959 (S.I. 1959 No. 47). The measure of the Lord Chancellor's small grinding is that whereas the Act deals with legal advice in a few lines, the regulations run to six pages and it is our present purpose to endeavour to explain them as they will work on the ground in solicitors' offices.

Optional for solicitors to participate

The first essential fact of which we must remind ourselves is that no one need participate; those who have decided not to do so need read no further and may turn forthwith to Richard Roe, although it is possible that they began with Richard Roe. Beginning on 2nd March, those who have placed their names on the panels being compiled by area secretaries (and those who have not still have another week as the first lists will close on 6th February) will find that clients who come to their offices seeking advice will fall into four categories. Beginning at the top of the economic scale, we deal first with those we may call the affluent, who need have no truck with any scheme, either voluntary or statutory. The second category we may define as the cautious, those who can risk £1 but who want to be hedged against any more expense. They will come under the voluntary scheme, which is not dealt with by these regulations. The third category consists of the impoverished who are deemed to be able to afford half-a-crown but no more, while the fourth category consists of those who are receiving national assistance and whom we will describe as the broke. Leaving on one side the affluent and the cautious, we deal now in detail with the impoverished and the broke, who are covered by the statutory scheme and for whom these regulations provide.

Financial qualifications

In order to qualify, an applicant must not have more than £75 capital nor, unless he is receiving national assistance, an income, after making certain deductions, of over £4 10s. per week. The capital and income of husband and wife are treated as one unless the applicant's spouse has a contrary interest in the matter in which the applicant is seeking legal advice or the spouses are living separate and apart or in the circumstances it would be either "inequitable or impracticable" to treat their capital and income as one. The applicant's dwelling-house, household furniture and effects, personal clothing and tools and implements of his trade are left out of account. The deductions to be made in arriving at the qualifying maximum income are five in number. First, there is a deduction of £1 10s. in respect of a husband or wife wholly or substantially maintained by the applicant, and a similar deduction is made in all cases where the capital and income of the spouses are treated as one. Secondly, there is a deduction of £1 5s. in respect of any child wholly or substantially maintained by the applicant, or by the husband or wife of the applicant where the capital and income of the spouses are treated as one. Thirdly, there is a deduction of £1 10s. in respect of a dependent relative subject to the same conditions. Fourthly, income tax is deducted and finally contributions under the National Insurance and allied Acts.

Examples

Let us take two examples. Let us assume a male applicant who has no capital, who is married and living with his wife, who has four children under sixteen, who is the sole support of his mother and who has a net income after income tax and insurance contributions of £13 per week including family allowances. The deductions will be:—

	£	s.	d.
Wife	1	10	0
Children	5	0	0
Mother	1	10	0
	£8	0	0

He is left with £5 per week. He is then outside the " impoverished " class and will therefore have to be treated as " cautious " under the voluntary scheme.

Secondly, let us assume a female applicant who is earning £9 per week after tax and insurance, who is separated from and not being maintained by her husband, who has two dependent children under sixteen and who seeks advice about obtaining maintenance or a divorce from her husband. Her husband's capital and income are ignored; her deductions will be limited to £2 10s. in respect of her children. She is left with £6 10s. so that she too is outside the statutory scheme. If the first applicant had one more child and if the second applicant earned only £7 per week each would qualify.

Every applicant will be required to furnish the solicitor to whom he or she applies with information about his or her capital and income on a form which The Law Society will provide and the solicitor will have to decide, in the light of guidance given by The Law Society, whether the applicant qualifies or not. At first sight this may appear to be a burden but clearly the solicitor will have to accept the truth of what the applicant states on the form. Assuming (as we hope is the case) that the form is simple, it should be only a matter of seconds to decide whether an applicant qualifies or not.

P. ASTERLEY JONES

[To be concluded]

THE SURCHARGE OF COUNCILLORS

RECENT proceedings by the district auditor at St. Pancras have brought once more into the public eye the provisions of the Local Government Act, 1933, whereby councillors or other members of a local authority—and in certain circumstances their officers—may be surcharged in respect of illegal payments made out of the rates. As these St. Pancras proceedings are still not closed, we do not propose to comment on them, but intend to discuss the sections concerned and the nature of the advice to be given by a solicitor consulted by a councillor client.

District audit

The power—or rather duty—of a district auditor to disallow any item of account which is contrary to law is contained in s. 228 of the Local Government Act, 1933; it is, of course, confined to audits held by him, and this excludes at once most of the accounts of a borough council not subject to district audit. Only some of the ancient boroughs are so exempt from district audit, and even in their cases the rate collection account and a few other accounts (such as the housing revenue account, over which the Minister has a special supervision) *are* subject to district audit; all accounts of all other local authorities are subject to district audit. Where a district auditor—an officer of the Ministry of Housing and Local Government (see 1933 Act, s. 220)—disallows an item of account as being contrary to law, it thereupon becomes his duty to surcharge (see s. 228, *ibid.*):—

(*a*) "the amount of any expenditure disallowed, upon the person responsible for incurring or authorising the expenditure." Such a person—or persons—will normally be the members of the local authority concerned, as it is they who take the decisions; on occasion, however, an officer may be liable under this paragraph, as, for example, where he has given palpably wrong advice on a legal or technical matter on which the council have acted.

(*b*) "any sum which has not been duly brought into account, upon the person by whom that sum ought to have been brought into account." Cases under this paragraph will normally arise as a consequence of mistakes—deliberate or otherwise—in financial or other administration, and will not often result in a surcharge on members of the authority, unless possibly the auditor can establish that slack administration was the direct and deliberate intention of the council.

(*c*) "the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred." This again is not likely to result in a surcharge on a member of the local authority.

Right of appeal against surcharge

Where an individual is aggrieved by a disallowance or surcharge made by a district auditor, he may, where the amount exceeds £500, *appeal* to the High Court, or in any other case, appeal either (at his option) to the High Court or to the Minister. On such an appeal, the High Court or the Minister (as the case may be) may confirm, vary or quash the auditor's decision, and where the appeal is to the Minister, he may state a special case on a question of law for the opinion of the High Court (Local Government Act, 1933, s. 229). (For procedure, see R.S.C., Ord. 55B, rr. 59 and 60.) In addition to this right of appeal, a person surcharged may *apply* to the High Court or to the Minister (as above) for a declaration that "in relation to the subject-matter of the surcharge he acted reasonably or in the belief that his action was authorised by law," and on such an application the court or Minister may, if they think he ought fairly to be excused, relieve him wholly or partly from personal liability in respect of the surcharge and, subject now to certiorari or prohibition proceedings (Tribunals and Inquiries Act, 1958, s. 11), such a decision is final (*ibid.*, s. 230).

The question whether or not a surcharge should be upheld therefore resolves itself into the following aspects:—

(*a*) Was the original disallowance justified, in that the item was "contrary to law"?

(*b*) Was the person surcharged one of those responsible for the expenditure? and

(*c*) Did the person surcharged act reasonably, or in the belief that his action was authorised by law, and ought he fairly to be excused?

These three aspects will now be considered *seriatim*.

(*a*) *The legality of the expenditure*

It must first be understood that local authorities are, with the possible exception of the ancient municipal corporations,* creatures of statute, and as such, they can only do such things as are authorised by statute. Lofty motives cannot overcome a question of *ultra vires*, as the councillors of Poplar found when they decided to pay their workmen at rates greatly in excess of those generally ruling at the time (*Roberts* v. *Hopwood* [1925] A.C. 378). Further, if the authority are given a statutory discretion, they are expected to exercise that reasonably and in the interests of their ratepayers as a whole (*A.-G.* v. *Aspinall* (1837), 2 My. & Cr. 613). Councillors from time to time complain of this jurisdiction of the district auditor, arguing that the views of a government servant should not be allowed to override the reasoned opinions of elected representatives on a matter of policy, but it should be remembered that Parliament has set bounds to the functions of local authorities, and those bounds must be observed. It should also be noted that the auditor has a duty to act *proprio motu* in disallowing an item at audit; he need not necessarily have had his attention drawn to a particular illegality by a local government elector appearing before him under s. 226 (as such an elector has a right to do).

* It can be argued that such a corporation can do anything an ordinary person may do, provided it does not levy a rate therefor (*A.-G.* v. *Leicester Corporation* [1943] Ch. 86), but this has been doubted.

A person surcharged also has a special defence if the expenses questioned have in fact been sanctioned by the Minister under the proviso to s. 228 (1) of the 1933 Act, for in such a case, whether or not the payment was illegal, the auditor may not disallow it. This proviso is used quite frequently in practice by a local authority wishing to undertake some laudable project involving expenditure, the legality of which is open to question; a good example of the way in which the proviso is used is circular 79/52, whereby the Minister sanctioned reasonable expenses incurred by local authorities in respect of the then forthcoming coronation of Her Majesty. It was still open for the district auditor to disallow particular expenses that seemed to him to be unreasonable, but he could not disallow a reasonable expenditure simply because there was no express legal authority therefor.

(*b*) *Responsibility for the decision*

Either officers or members of a local authority may be surcharged, but it is quite clear that a district auditor has no power to surcharge an "outsider" such as, for example, a contractor who has defrauded the council (*Re Dickson* [1948] 2 K.B. 95). On the other hand, any of the councillors who signed the cheque or the order authorising the cheque to be drawn, in satisfaction of an illegal payment, will be liable to be surcharged, and it seems also that the auditor may surcharge any member of the council who voted for or assented to the payment (*Re Magrath* [1934] 2 K.B. 415).

(*c*) *Acting reasonably*

Here the person surcharged may be relieved by the court (or the Minister) in certain circumstances; this is a discretionary remedy, and the applicant does not have to establish the legality of the original payment (indeed under this jurisdiction—s. 230—it is assumed that this could not be done), but he merely attempts to establish his own *bona fides*. Acting in contravention of the law where that is clear is not, however, acting reasonably (*Roberts* v. *Hopwood*, *supra*), and relief would not be granted in such a case. Where, however, the council's legal advisers had advised the council wrongly on a point of law, a councillor who had acted in reliance on that advice could use s. 230 to seek relief. Further, a payment (for example, to a contractor) may be illegal as being outside the terms of a contract made by the council, and so open to disallowance and surcharge by the auditor, and yet it may be a reasonable payment for the council, as a matter of ordinary business, to have made (see, e.g., *Re Hurle-Hobbs* (1944), 108 J.P. 200).

Effect of surcharge

When a sum has been certified by a district auditor to be due on a surcharge, it is recoverable on complaint summarily or as a civil debt, on the initiative of the local authority concerned; alternatively the district auditor himself may enforce payment (1933 Act, s. 233). In addition, any person who is surcharged to an amount exceeding £500 is disqualified from being a member of a local authority, or from being elected such a member for a period of five years from the date of the surcharge (1933 Act, s. 59 (1) (*d*)). On the surcharge becoming effective, i.e., when any appeal has been finally determined, or the final date for lodging an appeal is past, the office held by the person surcharged automatically falls vacant (*ibid.*, s. 65 (*d*)). If the person surcharged appeals to the High Court, and the court either reduces the surcharge to £500 or less, or quashes the surcharge completely, the disqualification will not operate, and also if a declaration is granted under s. 230, *supra*, the individual will automatically be relieved from the disqualification, whether or not the court decides that he ought fairly to be excused personal liability in respect of the surcharge. This penalty by way of disqualification makes it impossible for a body of councillors to carry through an illegal policy in spite of surcharges by the auditor—they would not be able simply to pay up (or go to prison) and remain members of the local authority.

Disallowances and surcharges do not occur often in local authority practice; the sections in the 1933 Act can be traced back to the Poor Law Act of 1834, when they formed part of Chadwick's centralising control over the peculations of the local boards; fortunately these reasons for the control have now almost completely disappeared, partly because of the high standards set by the district auditors themselves. As a means of enforcing the *ultra vires* principle in local government administration, the system of district audit is most effective—some say *too* effective—and it provides a convenient alternative to the more cumbersome procedure by way of court proceedings for an injunction.

J. F. GARNER.

Mr. JOHN ANDREW HALLMARK, solicitor, of Llandudno, has been returned unopposed to represent the Castle Ward, Conway, on the Caernarvonshire County Council.

Mr. JOHN PERCIVAL MEADON, has been appointed assistant clerk to Surrey County Council in succession to Mr. J. H. N. Bourne, who is resigning in March.

Mr. ARTHUR ROBERT NUDD, acting clerk to Heckmondwike Urban District Council since December, 1958, has been appointed clerk.

Mr. EDWIN WALKER WRIGHT, solicitor, of Wolverhampton, has been appointed a full director of the Willenhall Motor Radiator Company.

The following appointments are announced by the Colonial Office: Mr. H. W. N. BETUEL, Chief Magistrate, Eastern Nigeria, to be Judge of the High Court, Eastern Nigeria; Mr. V. E. CRANE, Magistrate, Grade I, Lagos, to be Chief Magistrate, Lagos; Mr. W. H. GARRIOCH, District Magistrate, Mauritius, to be Crown Counsel, Mauritius; Mr. K. C. ST. L. HENRY, Deputy Registrar, Supreme Court, Jamaica, to be Assistant Legal Draftsman, Mauritius; Mr. A. E. JONES, Magistrate, Trinidad, to be Senior Magistrate, Trinidad; Mr. O. D. MARSH, Assistant Legal Draftsman, Jamaica, to be Legal Draftsman, Jamaica; Mr. J. A. OGUN, Legal Assistant, Federation of Nigeria, to be Registrar of Trade Unions, Federation of Nigeria; Mr. W. J. PALMER, Chief Registrar, Eastern Nigeria, to be Judge of the High Court, Eastern Nigeria; Mr. G. A. REID, Assistant Legal Draftsman, Jamaica, to be Legal Draftsman, Jamaica; Mr. V. A. SAVAGE, Chief Magistrate, Eastern Nigeria, to be Judge of the High Court, Eastern Nigeria; Mr. D. A. WILLIAMS, Assistant Legal Draftsman, Barbados, to be Assistant to the Attorney-General and Legal Draftsman, Barbados; Mr. R. WINDHAM, Chief Justice, Zanzibar, to be Justice of Appeal, Court of Appeal for Eastern Africa; Mr. YAP YEOK SIEW, Senior Assistant Registrar, Supreme Court, Malaya, to be Registrar of the High Court and Administrator-General, North Borneo.

Mr. James Gaukroger, solicitor, of Kidderminster, is giving up the law after twenty-one years, to become sales manager and director of two industrial firms in Stourport. His practice in Kidderminster is being taken over by Messrs. H. G. Ivens and Hill.

Alderman J. B. Maudsley, solicitor, of Maidenhead, has been re-elected a member of the general purposes and housing committees of the Association of Municipal Corporations.

Mr. S. C. Lane has this year completed fifty years' service with the firm of Messrs. Shield & Son, of Alresford, Hants.

THE ROMANS HADN'T A WORD FOR IT—II

The relevance of quasi-contract

WITH reference to the cases considered in the first part of this article, Lord Denning's remark that we are in an uncharted area between tort and contract prompts the inquiry: What is the relationship between those cases and the cases on quasi-contract? For quasi-contract has also been classified as lying between the realm of tort and contract. In quasi-contract the defendant is under an obligation to the plaintiff by virtue of circumstances which do not require a contract between them nor is the obligation necessarily a tort known to English law. If the quasi-contractual obligation is an implied contract, it is implied not as something in the nature of a bargain to be inferred from the conduct of the parties but as having been implied by the law. "The law does not require an actual agreement between the parties, but implies a contract from the circumstances. In fact, the law makes the contract for the parties. Thus in actions for money had and received to the plaintiff's use the action may lie against the defendant even though he may have protested against such a contract," said Pollock, C.B., in *Gore* v. *Gibson* (1845), 13 M. & W., at p. 626. Winfield, in his "Province of the Law of Tort," regards the obligation in quasi-contract as "liability not exclusively referable to any other head of the law, imposed upon a particular person on the ground of unjust benefit." The reference to "unjust benefit" no doubt arises from the fact that in practice recovery of money is the usual object in this type of action.

The quasi-contract enigma

There is a striking resemblance between the enigma of quasi-contract and the uncharted area wherein domestic or *ad hoc* tribunals seek to condemn a man to commercial death in a particular line of business. In both cases, the courts have failed to make up their minds firmly and clearly whether the basis of the claim lies in contract or not. In both cases there is an absence of that element of bargain with its attendant doctrine of consideration. In both cases it is the law which is seeking to impose on the defendant an obligation, if necessary against his will and protestation, rather than as a construction of what the defendant intended to do under the so-called contract.

In *Moses* v. *Macpherlan* (1760), 2 Burr. 1005, Lord Mansfield said that the action in quasi-contract was founded on "the ties of natural justice and equity. . . ." In *Sinclair* v. *Brougham* [1914] A.C. 398, those law lords who ventured to express views on what was the basis of the action rejected Lord Mansfield's view and suggested that all claims must be either tort or contract and that quasi-contract was a branch of contract and not *sui generis*. Lord Atkin, in *United Australia, Ltd.* v. *Barclays Bank, Ltd.* [1941] A.C. 1, admits that the implied contract is fictitious. Lord Denning is clearly willing to accept a category distinct from contract or tort when he says, in *Nelson* v. *Larholt* [1948] 1 K.B. 339: "Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity, or contract, or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

With so many diverse views, we need not doubt that the true nature of the obligation in quasi-contract has not been satisfactorily established: it remains an enigma.

Back to the Romans

Roman law exhibits, slightly, the same difficulty. In Gaius's Third Commentary, para. 91 (Nasmith), there is a reference to an obligation *re* on a person who receives anything not due to him with the comment that this species of obligation does not appear to be founded on contract, for he who hands over with the intention of paying desires rather to dissolve than to contract an obligation; and these obligations are not called "quasi-contract," but simply classed as *obligationes ex variis causarum figuris*. Justinian, in his Institutes (Book III, Tit. XXVIII (Nasmith) *De obligationibus quæ quasi ex contractu nascuntur*), says (pr.): "Having already enumerated the various kinds of direct obligations, we will now treat of those which cannot be said properly to arise from a contract, but yet, inasmuch as they take not their origin from delict, seem to arise from an implied or quasi-contract." This is a *non sequitur*, but according to Buckland and McNair, the truth appears here and there in the proposition that the action is given *utilitatis causa*. He then enumerates (1) the *actiones negotiorum gestio* where a man acts spontaneously in another's business of necessity (and which is not recognised in English law except so far as salvage may be said to be of this character); (2) rights between tutor and pupil (guardian and ward); (3) common rights not arising from partnership; (4) rights of a co-heir to an action *familiæ erciscundæ*; (5) rights of a legatee against an heir; (6) money paid under a mistake of fact.

The above is a mixture of what we should classify under either agency of necessity, salvage, trusts and the rights of tenants in common or beneficiaries and "quasi-contract." But it is of interest to observe that in the later development of Roman law under Justinian quite a heterogeneous group of cases could logically be classed as neither contract nor tort. Of course, the concept of the English trust had not developed in Roman law in the same way as it has here, but again there is a parallel since, as we have seen, Lord Mansfield regarded quasi-contract as allied to equity.

Extent of quasi-contract

We tend to regard quasi-contract as limited to recovery of money, and the accepted heads do appear to be so limited. But they are not limited to the recovery of a specific quantified sum of money, for whilst the action for money had and received on a consideration that has failed, or paid under a mistake of fact, is so limited, an action for a *quantum meruit* can be founded on quasi-contract and in that case the value has to be ascertained by the court. This is not the same as a claim for damages, which is what a person put out of business or otherwise suffering loss by reason of a wrongful decision by a body in the position of *X* above would want to claim, but then we have the remedy against a trustee who commits a breach of trust and is forced to disgorge not only the money taken but any profit made, and that is at least analogous to quasi-contract, and the requirement that the profit be disgorged is equivalent to damages. For damages differ from *quantum meruit* mainly on the point that prospective loss can be claimed, and the loss of profit is something like prospective loss. But the analogy is admittedly a little strained and must not be pressed too far. A useful summary and analysis of quasi-contract is given by J. A. Clarence Smith in 19 *Modern Law Review* 255 (1956).

In *Phillips* v. *Homfray* (1883), 24 Ch. D. 439, the value of minerals wrongfully taken from the plaintiff by a person then deceased was held recoverable from the executor, and this could not have been an action in tort because of the maxim *actio personalis moritur cum persona*, and it could not be an action in contract. This was an inquiry into damages for trespass and was treated as an exception to the maxim, but in principle it appears comparable to quasi-contract. It must be observed that the reason why damages as such are not claimed in quasi-contract is that the cases where money or value could be claimed in quasi-contract are often cases where there is an alternative remedy for breach of contract or tort. Thus, if I pay for goods in advance and they are not supplied, I can either sue in quasi-contract for the recovery of the money paid on a consideration that has failed or I can sue for breach of contract in failing to supply the goods. Or if an agent converts my money to his use I can claim the money in quasi-contract or damages for the tort of conversion.

In any event, it does look as though in *Byrne's* case and the other similar cases the obligation is of a nature similar to the quasi-contractual and that this obligation will need to carry the remedy of damages, and other legal and equitable remedies. But, of course, this is only an analysis and not an authoritative view.

A doctrine of specific natural obligation

There is room for a third head of obligation lying between contract and tort and comprising obligations imposed by the law on two parties who have been placed in such a relationship that one must have special regard to the interests of the other. The common element is a unilateral obligation based on the current concept of justice. It is not an obligation arising from contract because there is lacking the element of a bargain freely negotiated by offer and acceptance and supported by consideration. Nor is it a tort because in England the law of torts is limited to those heads of liability set by procedural and other historical considerations and because the law of torts does not encompass obligations lying specifically between two parties: the obligations of the law of torts are towards the public, or classes of the public, generally. It would include, but not be limited to, quasi-contract, but above all should not be called quasi-contract. Under the same head agency of necessity and salvage might well be included. Even obligations arising from status might come within it, including, for example, the obligation of a minor to pay a reasonable price for necessaries, and his obligation to yield up goods obtained by fraudulently representing that he was over age. Accounts stated may also find a place there, and perhaps the obligation on a husband to bury his wife and to pay anyone who, where it was reasonably necessary, has arranged the matter for him (*Bradshaw* v. *Beard* (1862), 12 C.B.N.S. 344). Would " specific natural obligation " be too vague a term, distinguishing the self-imposed obligation of true contract and the general obligation of tort? But the baby is not born yet so it is premature to christen it.

If Harman, J., had not been bound, by the discussions in earlier authorities, to consider the problem in *Byrne's* case as arising out of an implied (factual) contract, but instead had been invited to consider that the obligation on K.R.S. to observe natural justice was founded on an obligation arising naturally from the circumstances, he might have had less ground for hesitation, and pleading in future would be an easier task. But the ease would be relative only, since the limits of this type of obligation need to be worked out: it would probably be limited to cases where a person exercising monopolistic powers, or powers of that character, in a particular activity or business acts in a manner detrimental to another who is subject to those powers. If there are, between the two persons, rules for the exercise of those powers, or if without such rules the person with the power gives a reason for his exercise of them, he has an obligation to observe the rules (if any) and to act according to natural justice, and he must also show that he acted on reports or information that were fair and accurate. If he fails to do so a claim for damages and other remedies, legal or equitable, lies.

Need for a name

" What's in a name? " asks Juliet, and then she declares: " That which we call a rose by any other name would smell as sweet." Accepting that human experience and thought is not limited to that which can be expressed in words, and that whatever word be ascribed to a particular experience or concept, it remains of the same nature, yet, when a name is given to something, that name becomes charged with meanings and the sound or sight of it initiates emotional reactions, in consequence of which the thought process surrounding a word tends to be constricted. In other words, it is highly desirable that a concept which has a distinct existence should have its own connotation, and to give it a name belonging to something else is a sure way of causing confusion and preventing the development of the concept. (In this connection compare the recent case on " Spanish Champagne " discussed at pp. 885 and 952, *ante*.) The Romans hadn't a name for the cases which Justinian said were " as though contract," and neither have we. If in the five hundred or so years between Gaius and Justinian no distinct name had been thought of for this type of concept, we must not expect too much ourselves. Perhaps there is too little in common among the cases that seem possible candidates for election to this office for a generic term to become accepted. More probably, the reason is that the need has not been pressing enough. " Restitution " has been suggested for the accepted heads of quasi-contract, but the field, it is submitted, is wider. But it is hard to see how the christening can take place. Until it does take place, we shall have to continue with our Procrustean efforts to clothe the body in misfits, whilst complaining that it is badly dressed; and, at the same time (to mention the practical problem), to draw the pleadings with such ingenuity as to be able to persuade the court that at least the underclothing conforms to the accepted conventions of the respectable.

L. W. M.

[Concluded]

OBITUARY

MR. W. W. HARGROVE

Mr. William Wallace Hargrove, solicitor, of London, E.C.4, died on 16th January. He was admitted in 1886.

MR. P. H. HILL

Mr. Percy Horace Hill, solicitor, of London, W.C.1, died on 20th January. He was admitted in 1924.

MR. R. L. M. LLOYD

Mr. Russell Llewelyn Mandeville Lloyd, M.C., solicitor, of Rhyl, died on 19th January. He was admitted in 1921.

MR. W. P. WILLIAMS

Mr. William Price Williams, retired solicitor, of Carmarthen, has died, aged 84. He was admitted in 1903.

The Practitioner's Dictionary

"ET CETERA"

IT is of course questionable, to say the least, whether a legal draftsman would ever consider it to be advisable or desirable to employ the expression "et cetera," but nevertheless the words do appear in documents and it may be necessary to decide their exact meaning and significance.

As a general rule "et cetera" or "etc." refers to property *ejusdem generis*. For example, in *Newman* v. *Newman* (*No.* 2) (1858), 26 Beav. 220, where a testator simply bequeathed all her "household furniture and effects, plate, linen, china, glass, books, wearing apparel, etc.," to the defendant, Sir John Romilly, M.R., entertained no doubt that the words "et cetera" should be "confined to things *ejusdem generis*" and that they mean "and all other things like the preceding." He therefore decided that there was an intestacy except as to the articles specified in the will and those which were *ejusdem generis*. The court arrived at a similar conclusion in *Barnaby* v. *Tassell* (1871), L.R. 11 Eq. 363, where it was decided that a gift of "all my furniture, etc.," did not pass shares in the Chatham Waterworks Company.

At first sight it may seem that *Chapman* v. *Chapman* (1876), L.R. 4 Ch. 800, is inconsistent with these cases. By means of a home-made will the testator left to his wife "all my money, cattle, farming implements, etc., she paying my brother James Chapman the sum of—to him or his heirs: to my brother Lawrence Chapman the sum of—to him or his heirs." Earlier in the will the testator had directed that his farm should be sold and that all his just debts should be paid by his wife. Jessel, M.R., decided that the testator had effectively given all his property to his wife as, "looking at the whole of the will, what the testator means is that she is to take everything he has in the world, she paying his debts and legacies." In view of this finding it is apparent that this case is of little importance in construing the words "et cetera," especially as his lordship did not so much as mention the expression in the course of his judgment, and it is submitted that *Chapman* v. *Chapman*, *supra*, is not authority for saying that "et cetera" may extend a provision in a will or other document beyond those things which are *ejusdem generis*.

The general principle was followed in relation to a contract for the sale of land in *Re Walmsley and Shaw's Contract* [1917] 1 Ch. 93. In that case a contract for the sale of certain land "and buildings, material, etc." made no mention of a right of way and Eve, J., took the view that the words "et cetera" did not carry it as they referred to "material" and were limited to things of the same character. Again, where the phrase "goodwill, etc.," was used in the course of negotiations for a contract for the purchase of a business, the court decided that its meaning was not uncertain as it included "such other things as are necessarily connected with and belong to the goodwill" (*Cooper* v. *Hood* (1858), 28 L.J. Ch. 212). Similarly, the use of "etc." in an agreement for a lease may not by itself produce such uncertainty as to render it incapable of specific performance. Thus where an agreement stipulated that the tenant would leave in repair the "gates, buildings, etc.," and that the landlord reserved to himself "all customary rights and reservations, such as liberty to cut and plant timber, search for and work mines or minerals, etc.," and the property, the rent and other material terms were sufficiently described and ascertained, it was held that a decree of specific performance would be granted (*Parker* v. *Taswell* (1858), 27 L.J. Ch. 812).

The most recent illustration of the judicial interpretation of "et cetera" is to be found in *Milne's Trustees* v. *Davidson* [1956] S.L.T. 34. A testatrix directed the trustees to divide the residue of her estate "among various charities, nursing associations, infirmaries, etc., to be selected by them" and it was contended that the use of "etc." introduced a class of beneficiaries which might be non-charitable and therefore that the gift was void for uncertainty. This argument was rejected by the Court of Session, and the Lord Justice-Clerk (Thomson) said: "When you find in a will a list of things (and particularly if these things are of the same kind) and the list concludes with the general words like 'et cetera' the meaning of the general words is restricted to things of the same class as those which are contained in the list."

D. G. C.

"THE SOLICITORS' JOURNAL," 29th JANUARY, 1859

ON the 29th January, 1859, THE SOLICITORS' JOURNAL discussed the concentration of the courts: "The views of the present Government, who, with all their desire for popularity, are not quite so effective for performance as they are in profession, were known to be in favour of some miserable piecemeal scheme which, pretending to remedy, would in reality perpetuate the existing inconveniences. We did not suppose, indeed, that any of the absurd schemes propounded could be carried out in face of the loud protest that would have been raised . . . No one could really have believed that Lord John Manners would be allowed to brick up Lincoln's Inn Fields, or to hide away the fifteen judges somewhere in the City. But we did fear that amid the wilderness of projects the true solution of the question, How are we to provide for our Courts? would be overlooked or purposely put aside. We have no longer any such fear. The demonstration made by the Law Amendment Society has called public attention to the importance of the subject, and the representatives of public opinion have spoken out . . . It being evident that the new courts must be built somewhere, any dispute about the site has seemed to us, from the very first, to be idle . . . In the very heart of that portion of the metropolis where law has for centuries fixed its habitation lie five acres of ground, covered by tenements ready to tumble down of themselves, and occupied by a population which it would be a mercy to disperse. When the Palace of Justice has risen up where crime and squalor now fester unrepressed, people will wonder why such streets were so long tolerated and why an edifice so necessary to public convenience was so long delayed."

The Swiney Prize, awarded by the Royal Society of Arts for the best published work on Medical Jurisprudence, has gone to Dr. Keith Simpson for his book "Forensic Medicine," 3rd edition.

Viscount Kilmuir, the Lord Chancellor, spoke at the annual dinner of the Bradford City Magistrates, at the Victoria Hotel, Bradford, on 16th January.

Landlord and Tenant Notebook

DEMOLITION, ETC., OF A SUBSTANTIAL PART

THE provision in the Landlord and Tenant Act, 1954, s. 30 (1) (*f*), by which a landlord of business premises may oppose an application for a new tenancy on the ground "that on the termination of the current tenancy [he] intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably be expected to do so without obtaining possession of the holding" has given rise to a good deal of litigation. We have had a number of decisions on the meaning of "intends" and on how intention is to be proved and on when it must be formed and on who must do the actual demolition or reconstruction or construction; and, before the recent decision in *Bewlay (Tobacconists), Ltd.* v. *British Bata Shoe Co., Ltd.* [1959] 1 W.L.R. 45 (C.A.); p. 33, *ante*, the question whether proposed demolition or reconstruction was to be of a substantial part of the premises has twice been before the court—though in each of the two cases its importance had, to some extent, been obscured by a different issue.

Thus in *Atkinson* v. *Bettison* [1955] 1 W.L.R. 1127 (C.A.); 99 SOL. J. 761, when a jeweller had bought the reversion to a lease of a grocer's shop and sought to oppose an application for a new tenancy by reference to s. 30 (1) (*f*) it was strongly suggested that he invoked that ground only because his "real" purpose was to use the shop for his own business, and s. 30 (2) disqualified him from availing himself of s. 30 (1) (*g*) as he had not owned the premises for five years. And, until the decision in *Fisher* v. *Taylors Furnishing Stores, Ltd.* [1956] 2 Q.B. 78 (C.A.); 100 SOL. J. 316, explained the position, *Atkinson* v. *Bettison* had appeared to decide that if reconstruction was not the landlord's primary purpose the tenant should succeed. But what it did decide was that the following work on the ground floor need not amount to reconstruction of a substantial part of a three-storeyed building: replacing a shop-front by one "with a kind of arcade" suitable for a jeweller's shop, taking down a wall at the back, and (it seems) making a new floor.

In the other case, *Craddock* v. *Hampshire County Council* [1958] 1 W.L.R. 202 (C.A.); 102 SOL. J. 137, the question was whether landlords intended to *demolish* a substantial part of the premises and, while the question of primary *versus* ancillary intention again loomed large, a finding that a cowshed and a Nissen hut were a substantial part of the ·229 acre of land on which they stood was upheld.

Demolition plus reconstruction

In *Atkinson* v. *Bettison* the retail shop was to remain a shop; in *Craddock* v. *Hampshire County Council* a motor vehicle repair shop was to be added to a smallholding; and it is somewhat surprising that no reference was made to the latter decision in the course of *Bewlay (Tobacconists), Ltd.* v. *British Bata Shoe Co., Ltd.*, in which the fact that the landlords meant to add the demised shop premises to their own adjoining shop appears to have been considered a novel feature. Admittedly, the question in *Craddock* v. *Hampshire County Council* was simply whether the buildings were a substantial part of the holding; in the recent case, both the question of what is "demolition" and that of "substantial work of construction on the holding" were in issue. The proposals, as regards the demised shop, were to alter some of the lavatory accommodation, to fill in a recessed portion of what was a party wall, to reconstruct the shop-front and abolish the present means of access from the street, and to remove approximately three-quarters of the dividing wall (not a load-bearing wall) between the two shops involving its replacement by screens and consequential alterations to some pillars which supported the ceiling.

The county court judge considered that the alterations to lavatory accommodation and the filling in of the recess were not "substantial" but that the removal of most of the dividing wall would be demolition of a substantial part of the premises, and the remaking of the shop-front a reconstruction of a substantial part of the premises.

It was argued that as the wall bore no load, that is to say, the building would not, apparently, collapse if it were not there—the occupants of the first floor having at some time desired a clear space above—its removal or the removal of part of it would not be "demolition." The Court of Appeal upheld the judge's rejection of the argument, but did not say very much about the point. The reference to pillars supporting the ceiling suggests that the wall was more than a mere partition; that though the building would not have collapsed, the ceiling would have come down unless the wall were there. Lord Evershed, M.R. (with whom his colleagues agreed), also considered that the replacement by screens could fairly be called "reconstruction." Presumably the operations proposed would be more drastic than, say, the adapting of the Royal Albert Hall for dancing after its use for music, or for a meeting, or for boxing, though that operation takes, I understand, some days.

Then, looking at the proposal to remake the front of the shop, Lord Evershed, M.R., considered that it was right to regard "the totality of what is proposed to be done." The evidence was that the expenditure on both shops would be about £5,600 and that £3,000 of this would be spent on alteration of the front of the shop next door to that demised. As a matter of common sense, the learned Master of the Rolls reasoned, the county court judge was entitled to ask himself the question whether these proposals involved the demolition or reconstruction of a substantial part of the premises, or the carrying out of substantial work of construction on them.

Adding together

It was also contended, on the tenants' behalf, that where there was *some* demolition to be done and also *some* construction or reconstruction, and if the demolition, taken in isolation, is not demolition of a substantial part of the premises, and, similarly, if the work of construction or reconstruction does not involve construction or reconstruction on or of a substantial part of the premises, then the landlord cannot successfully invoke the paragraph by saying that the parts which are the subject of the demolition, on the one hand, and the construction or reconstruction, on the other, when added together, amount to a substantial part of the premises. The court declined to accede to this proposition.

The "on or of a substantial part of the premises" is worth noting. The paragraph uses the adjective "substantial" twice: once in connection with demolition or reconstruction to qualify "part of those premises"; on the other occasion,

in connection with construction, to qualify "work." In *Atkinson* v. *Bettison* the court held that "substantial," in relation to "part of those premises," meant "considerable, solid, or big; in the sense in which we speak of a substantial fortune, a substantial meal, a substantial man, a substantial argument or ground of defence." This would warrant the proposition that it is the nature rather than the extent of the particular part of the premises which has to be considered—though the fact that the premises which were the subject-matter of that case were a three-storeyed building appears to have had some influence on the decision, as did the proportion occupied (by a hut and shed) in *Craddock* v. *Hampshire County Council, supra*. As far as the object of the statute is concerned, it would, however, be strange if a landlord opposing a grant of a new tenancy could be defeated if the scene of the proposed operations were a particular area of a large edifice, but succeed if the same operations were to be carried out in a small building. And, as it stands, the "considerable, solid or big" can readily be applied to "work of construction."

Modernisation unnecessary

An observation made by Lord Evershed, M.R., in the course of his judgment which is worth noting is "I would add that I do not, for my part, accept the view that para. (*f*) is exclusively applicable to the kind of demolition, construction or reconstruction which is appropriate to turning to modern uses an old or out-of-date building." If an invitation to accept that view was made, it may have been inspired by references made, in other cases, to the condition of the demised premises. If "the premises are old and worn out or are ripe for development the proposed work is obviously desirable": Denning, L.J., in *Reohorn and Another* v. *Barry Corporation* [1956] 1 W.L.R. 845 (C.A.); 100 SOL. J. 500, or "the condition of the premises is so bad that they ought obviously to be demolished and reconstructed in the near future": Denning, L.J., in *Gilmour Caterers, Ltd.* v. *St. Bartholomew's Hospital Governors* [1956] 1 Q.B. 387 (C.A.); 100 SOL. J. 110, the fact may assist a landlord whose genuineness of intention is in issue; but, as Lord Evershed, M.R., proceeded to say, we must construe the paragraph according to its terms. And one can demolish and reconstruct newly built and modern premises.

"Business as usual"

The county court judge's finding that the landlords in *Bewlay (Tobacconists), Ltd.* v. *British Bata Shoe Co., Ltd.*, could not reasonably do the work without obtaining possession of the holding does not appear to have been criticised in the Court of Appeal; nevertheless, Sellers, L.J., after concurring with Lord Evershed, M.R., adverted to the possibility of constructing an elaborate new shop-front without obtaining possession of the holding, which suggests that if that had been the only operation proposed the result might have been different. "It is within observation that very elaborate and large shop-fronts are frequently put in whilst the business is still continuing, justifying a notice 'Business as Usual'" (and those whose clients complain that our judges are not familiar with life as lived may note that a few weeks later Upjohn, J., in *Re Albemarle Street* (*No.* 1), *W.*1, had occasion to refer to what he had observed from an omnibus: see *The Times*, 16th December, 1958). The Notebook (102 SOL. J. 170) made the same observation when discussing *Craddock* v. *Hampshire County Council, supra*, commenting on the fact that so little is heard of the hypothetical question (for whatever the answer, the intention need never be carried out).

R. B.

HERE AND THERE

LOOK ROUND THE COURTS

THIS is the start of the first legal term in the New Year. Let us have a stocktaking look round the legal quarter. First the Royal Courts of Justice, that massively sturdy septuagenarian, has been given, if not a new look, at any rate a new orientation. Hitherto, so far as its official commissariat went, British justice was firmly based on the principle that drinking mattered quite a lot, and food mattered hardly at all by comparison. The armies of justice in the field did not march on their stomachs but they could ride very comfortably on a beer barrel. Hence an impressive stretch of vaulted and pillared gothic crypt at the strategic crossroads just beyond the Central Hall had from time immemorial been dedicated as a drinking bar. Beyond it various primitive draughty apartments, part corridors, part converted lavatories (to judge by the glazed tiles), were felt to be good enough for the hurried routine of mere eating. The food, though wholesome in the unadorned English style, was not calculated to impede the course of justice by tempting lawyers or witnesses to linger on into court hours. If the Club des Sans-Club had brought out an annual of the Auberges de l'Angleterre they would certainly have rated the whole set up as a national monument to the traditional British way of gastronomy. Well, we have changed all that now. The ancient bar has been dispossessed, pushed round a corner and compressed into a space little bigger than half a railway coach. The restaurant has come bursting out of its former hole-and-corner confinement to spread itself all over the crypt now partitioned off and no longer a right of way. The (to the British) new-fangled idea that lightness and brightness ought to go with eating has demanded that the whole space should be "gayed up" (rather as if one were to "gay up" St. Pancras Station) with paint and modern lighting and polished wooden flooring instead of tombstone flags. Now, I suppose, we can shortly look forward to coq au vin Grand Chancellier, sole Maître des Archives, hommard à l'Amirauté, tête de veau en perruque and other appropriate delicacies. There has been another notable reorientation. It has now been decided that Art matters and hitherto naked walls have suddenly burst into colour as a legal portrait gallery. Apart from the intrinsic merits of the change, it is going to be very useful in guiding strangers through the increased complexities of the building since the new restaurant blocked the central crossroads. One may say: "Turn left up the stairs past Mr. Justice Talfourd. On the floor above, do not pass Lord Keeper Coventry but go left again and straight on past Sir Leoline Jenkins."

NEW FOR OLD

OF the six great libraries of the legal quarter only three, those of the Law Courts, The Law Society and Lincoln's Inn, survived the bombing as museum pieces of pre-war bookmanship. The two Temples and Gray's Inn now all have splendid new establishments. The Middle Temple and Gray's Inn have each chosen to have a single great chamber with tables in the

bookcase bays and an upper gallery running all round the room. The Inner Temple has adopted a more irregular scheme with many nooks and corners for individual peace and isolation, so that it is quite easy for the stranger to lose his way. Gray's Inn seems to be in no great hurry to demolish the horrible little prefabricated concrete hut with which its librarians have had to be content since the war. This disfigurement to its grave and gracious gardens was described by Sir Winston Churchill, when he opened it, as " the architecture of the aftermath." By contrast, the Inner Temple has got rid of the blind, dark, sinister, mysterious erection which the Navy put up in its gardens during the war for some recondite warlike purpose and which afterwards the Society used as a store for some of its homeless books. The Middle Temple has made great haste to bang down its own temporary library between Brick Court and Essex Court to clear the site for a car park. This low rambling structure with the golden Agnus Dei over the door had somehow managed to acquire a certain familiar unpretentious charm. It stood over the cellars of the graceful red brick eighteenth-century building which used to divide the two courts, until it was demolished by a bomb in the great raids of 1941. (I still have a copy of " The Mercy of Allah " by Belloc which I picked up on the top of the rubble the morning after.) In that building Oliver Goldsmith died and Blackstone had once had his chambers. Between the wars one of the sets of chambers there had the reputation of being haunted. A door would open mysteriously without human agency and the tenant's dog would bristle as dogs are supposed to do when gifted with second sight. It is a pity that the need for a car park makes it impossible to re-erect something in the style of the old building, for the houses round the new open space, an incoherent jumble of seventeenth, eighteenth and nineteenth century, all out of harmony, are not calculated to form either a charming or an impressive piazza. The dividing building used to break their incongruities. Incidentally, the new Serjeants' Inn, north of King's Bench Walk, is a triumph of imaginative remodelling. It has no pretensions to reproduce the old Serjeants' Inn that was burnt in the war, but it most graciously achieves a wedding of the eighteenth-century spirit with modern conceptions.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

Clubs and the Local Authority

Sir,—Having spent many evenings during the Christmas holidays ferrying my children to and from parties, I have only just had the opportunity of reading Mr. Garner's article " Clubs and the Local Authority " contained in your issue of 13th December. Mr. Garner has omitted one way in which a local authority can assist, financially, clubs and other associations formed for worthy objects.

Presumably to pacify a section of public opinion, the Sunday Entertainments Act, 1932, provided by s. 1 (1) that as a condition of the licensing of cinemas for the purpose of cinematograph entertainments on a Sunday, one condition should be that a part of the profits, prescribed by the local authority, should be paid to that authority " for the purpose of being applied to charitable objects."

In my experience these moneys are utilised to assist clubs in the nature of boys' clubs and notwithstanding the somewhat hypocritical background causing payment to be made are nevertheless of real help to clubs formed for worthy objects.

D. S. THOMSON.

Tonbridge.

The Solicitor's Income

Sir,—I should like to join this correspondence to show what has been my experience of the salary offered to young solicitors, which I think is far truer of the general position in the profession than has been that of " A Young Solicitor."

I passed the Final in 1953, having obtained third-class honours. I then did two years' National Service and at the end of that sought a position in London. I was then (April, 1956), offered two positions. One, doing nothing but conveyancing, at a salary of £550 p.a.; the other, which promised a mixed selection of work, at £500 p.a., with the promise of a substantial rise in six months. This I accepted. A far cry from " A Young Solicitor's " £840 p.a. !

After about six months I changed jobs (of my own wish), obtaining another in London at a salary of £650 p.a., which rose to £700 p.a. and later £750 during the first twelve months.

During the first six months of 1958 I looked for a position in a country practice in the South of England. I corresponded with many firms, and am quite certain that the reputation which the profession have for being bad salary payers is well deserved. Numerous firms offered £600 p.a. to £700 p.a. to persons with experience. One firm told me that after three years their assistant had reached a salary of £720 p.a.; another offered £650 to me; a third offered a friend of mine £650 p.a. after he had already told them he was receiving £900.

I suppose I read about 100 or more applications for assistants, most of which were at The Law Society Bureau, and wrote to about thirty or so. Of all those, only four were prepared to pay £800 or over (except certain firms wanting experienced advocates), and these four all had reasonable partnership prospects.

So, after five years' articled training (unpaid), and at the end of my fifth year as an admitted man, I find myself at the age of twenty-eight with a salary of £850 p.a. Not unnaturally I am single; and have saved very little. Am I foolish to remain in private practice, when with luck I might obtain a government or industrial appointment paying at least £1,000 p.a.; have I been unlucky in looking for a job, in that such a one as that obtained by " A Young Solicitor " never came my way; or is it generally considered by you and your readers that the position outlined above is a fair and proper one ?

Gloucestershire. ANOTHER YOUNG SOLICITOR.

Points in Practice

Private Company—APPOINTMENT OF A NEW DIRECTOR BY SOLE SURVIVING DIRECTOR

Sir,—With reference to your answer to above query in THE SOLICITORS' JOURNAL of 16th January, p. 57, may I respectfully point out that there is no necessity for application to the court ?

A sole surviving or continuing director can fill the vacancy by appointing another director.

See Halsbury's Laws, 3rd ed., vol. 6, p. 56, para. 106, and note (*c*).

ERNEST W. DAWKINS.

Clevedon,
Somerset.

[*Our contributor writes :* Your correspondent's reference is to a paragraph in Pt. 2 of vol. 6 of Halsbury. That part deals with companies regulated by the Companies Clauses Acts. It is of no assistance in the present case.

A corresponding provision appeared as art. 89 in Table A of the Companies Act, 1908, and now appears as art. 100 in Table A of the Act of 1948. In submitting the query specific reference had been made by the questioners to the articles of their company. It was assumed, in preparing this particular reply, that as the questioners had examined the articles no assistance could be derived therefrom.

Company law problems frequently depend on the particular memorandum and articles of association of the individual company, and it is agreed that to be of general application a specific reference to art. 89 of the Act of 1908 ought to be added to the answer.]

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

BUILDING CONTRACT: WAGES: HOLIDAY CREDITS

Henry Boot & Sons, Ltd. *v.* London County Council

Lord Somervell, Morris and Pearce, L.JJ.

18th November, 1958

Appeal from Pilcher, J.

In 1952 and 1953 the plaintiffs, building contractors, entered into contracts with the defendant council to erect blocks of flats. The contracts were in the standard form issued by the defendants, which contained a "rise and fall" clause, providing that if during the currency of a contract "the rates of wages payable for any labour employed in the execution of the works" should in conformity with agreements between associations of employers and trade unions or with the decisions of a competent authority be increased above or decreased below the corresponding rates in force at the date of the contractor's tender, increasing or decreasing the cost to the contractor in carrying out the works, then an allowance equivalent to the net increase or decrease should form an addition to or deduction from the amount otherwise payable to the contractor. The plaintiffs were parties to schemes arranged by the building trade under which they, as employers, made weekly payments by way of credits for providing holidays with pay for the workmen. During the currency of the contracts increases were made in the payments or credits and the plaintiffs contended that these holiday payments or credits fell within the words in the "rise or fall" clause—"rates of wages payable." The council rejected the plaintiffs' claim and Pilcher, J., to whom the dispute was referred as an agreed special case, decided in the council's favour. The plaintiffs appealed.

LORD SOMERVELL said that he had come to the conclusion that a weekly sum which had to be credited to a man each week was within the expression "rates of wages" in this clause. It was not a point which was capable of much elaboration; but if there was an increase in the amount by which each employee was credited at the beginning of each week in respect of this holiday scheme, it was natural enough, for the purpose of this clause at any rate, to say that the "rates of wages" in respect of him had been increased. The defendants could, of course, have altered the contract by putting in express words, but they did not choose to do so; and therefore it fell to the court to follow the ordinary rule, and construe the contract as it was agreed between the parties.

MORRIS and PEARCE, L.JJ., agreed. Appeal allowed.

APPEARANCES: *R. D. Stewart-Brown*, Q.C., and *D. H. Gardam* (*Masons*); *Michael Hoare* (*J. G. Barr*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 133**

INFANT: CUSTODY: ORDER: JURISDICTION TO VARY

Bilainkin *v.* Bilainkin

Hodson and Ormerod, L.JJ. 17th December, 1958

Interlocutory appeal from Wallington, J.

A mother who had been given the custody of a child on the dissolution of her marriage with the father in 1949 applied to the registrar of the Divorce Division for leave to take the child abroad during the school term. The registrar, of his own motion, altered the form of the order as to custody to comply with the new wording approved by Lord Merriman, P., on 8th March, 1955 (Rayden on Divorce, 7th ed., p. 1185, para. 16) (which entitled the parent having the custody of a child to remove it from the jurisdiction during the school holidays without applying to the court for leave to do so, provided that she or he had given a general written undertaking to the court to return the child to the jurisdiction when called on to do so, and had obtained "the written consent of the respondent"). The registrar directed that the father should be informed of that variation. The father was also served with a summons, but did not appear and was not represented on the hearing of the mother's application. The registrar granted the specific application to take the child abroad during the school term, and—again of his own motion—struck out of the new order as to custody the words requiring that the written consent of the father should be obtained to take the child out of the jurisdiction. Relying on that variation, the mother sent the child abroad during the school holidays unaccompanied by herself, and without obtaining the father's written consent. The father appealed.

HODSON, L.J., said that for some reason or other, which had not been explained to the court, the registrar before whom the application came for leave to take the child abroad during the school term removed the reference to the written consent of the respondent which the direction of the President would seem plainly to require. No doubt the question of custody could be reviewed from time to time, but his lordship saw no reason why that direction was not complied with; and those words "with the written consent of the respondent" should in future appear in the custody order. There would accordingly be that variation.

ORMEROD, L.J. concurred.

APPEARANCES: The father in person; *Roger Gray* (*Goodman, Derrick & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 139**

LANDLORD AND TENANT: BUSINESS PREMISES: NOTICE TO QUIT: DECONTROLLED BEFORE NOTICE EXPIRED: TENANCY WITHIN ACT OF 1954: VALIDITY OF NOTICE

Brown *v.* Jamieson and Another

Lord Evershed, M.R., Lord Cohen and Sellers, L.J.

18th December, 1958

Appeal from Stockton-on-Tees County Court.

On 14th November, 1956, Mrs. Brown served on the defendants, Mr. and Mrs. Jamieson, a notice to quit premises comprising a shop with living accommodation at Stockton-on-Tees on 16th November, 1957. It was not disputed that at that time the premises were within the scope of the Rent Acts, but on 6th July, 1957, by virtue of the Rent Act, 1957, they ceased to be controlled under the Rent Acts. Accordingly, s. 43 (1) of the Landlord and Tenant Act, 1954, ceased to apply to the tenancy and it came within the provisions of Pt. II of the Act of 1954. The notice to quit was in accordance with the terms of the tenancy and would, admittedly, have been valid if the tenancy had not come within the Act of 1954. The notice was not, however, in the form required by that Act and the statutory regulations made under it. In proceedings in the county court for possession by the landlord, the judge decided that the notice was ineffective to determine the tenancy. The landlord appealed.

LORD EVERSHED, M.R., said that, at first sight, the notice was saved by s. 24 (3) (*b*) of the Act of 1954, but the question was whether *Orman Bros., Ltd.* v. *Greenbaum* [1955] 1 W.L.R. 248 was a decision binding the court to decide otherwise. On a proper reading of Devlin, J.'s judgment ([1954] 1 W.L.R. 1520), which was affirmed by the Court of Appeal, that case did not decide that the saving by s. 24 (3) (*b*) of the Act of 1954 of notices not complying with the statutory provisions applied only in cases where the application of Pt. II of the Act was exclusively attributable to a change in the facts relating to the premises which had taken place after the service of the notice, and the reference by Devlin, J., and subsequently Lord Goddard, C.J., to that type of case was only as an illustration of the most likely change in the status of the premises. It was anomalous that a tenant whose contractual tenancy was subject to a pending notice to quit at the date of de-control should be in a worse position than a statutory tenant whose contractual tenancy had actually been determined, particularly having regard to s. 27 (2) of the Act of 1957, which gave landlords an opportunity to take advantage of the anomaly. But s. 24 (3) (*b*) applied and the notice was valid.

LORD COHEN, dissenting, said that the *ratio decidendi* of *Orman Bros., Ltd.* v. *Greenbaum* was, notwithstanding the generality of the statutory language, that the application of s. 24 (3) (*b*) was limited to cases where the application of the Act of 1954 was exclusively attributable to a change of user of the premises since the service of the notice, or at any rate in matters of fact as distinct from the mere operation of legislation as respects the premises concerned. Accordingly, the court was bound to hold that this notice was invalid.

SELLERS, L.J., agreed with LORD EVERSHED, M.R. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *P. V. Baker* (*Johnson, Wetherall & Sturt*, for *Barugh & Wilkinson*, Middlesbrough); *L. A. Blundell* (*Tarry, Sherlock & King*, for *Cohen, Jackson & Scott*, Stockton-on-Tees).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 156**

LANDLORD AND TENANT: EFFECT OF GENERAL DENIAL OF LANDLORD'S TITLE IN MODERN PLEADING

Warner *v.* Sampson and Another

Lord Denning, Hodson and Ormerod, L.JJ. 18th December, 1958

Appeal from Ashworth, J. ([1958] 1 Q.B. 404; 102 SOL. J. 107).

On 27th April, 1955, a landlord issued a writ against two defendants, suing them as the legal personal representatives of the lessee and claiming possession of the demised property—a house with an unexpired term of forty years—on the grounds of non-payment of rent and breaches of covenant contained in the lease. The statement of claim, *inter alia*, referred to the lease, set out the title of the landlord (which was a derivative title) and specified the breaches of covenant alleged. On 27th May, 1955, judgment in default of appearance was entered against the first defendant. On 14th June the solicitors for the second defendant instructed counsel to draft a defence if only to stay the landlord's hand while efforts were made to remedy the breaches of covenants; and on 15th June a defence, signed by counsel, was delivered on behalf of the second defendant, in which she admitted that she was appointed executrix of the will of the lessee, and denied the alleged breaches of covenant. Paragraph 3 was in the common form of a general traverse as follows: "Save and except for the admission herein contained this defendant denies each and every allegation in the statement of claim as if the same were specifically set out and traversed *seriatim*." On 29th June the landlord delivered a reply alleging that by that defence the second defendant had disclaimed and disputed the landlord's title as landlord and that she (the landlord) was entitled, and thereby exercised her right, to claim forfeiture of the term. On 28th August the judgment against the first defendant was set aside, and, after an appeal by the landlord, the second defendant was given leave to amend, but not to withdraw, her defence. Thereafter a defence by the first defendant and the amended defence of the second defendant, both of which admitted the lease and the title of the landlord and contained a counter-claim asking for relief from forfeiture under s. 46 of the Law of Property Act, 1925, were delivered; but the landlord, by a reply (which contained a counter-claim) claimed possession of the premises on the ground that by reason of the denial of the title in the original defence the term had become forfeited, and contended that there was no jurisdiction to grant relief from the forfeiture resulting from the pleadings. Ashworth, J., held that there had been a forfeiture incurable by amendment. The defendants appealed.

LORD DENNING said that a general denial of this kind in a defence did no more than put the plaintiff to proof. Yet if *Kisch* v. *Hawes Brothers, Ltd.* [1935] Ch. 102 were rightly decided, such a denial of the plaintiff's title was a ground on which a lessor was entitled to claim forfeiture of the lease; and as soon as the plaintiff delivered a reply claiming the right to re-enter on that ground, there was a forfeiture, irrevocable and incurable by amendment, and enforceable in these very proceedings. The history of forfeiture by matter of record started in feudal times, and when the feudal tenures died out, the law on the subject died too. Never since feudal times had a denial of title by itself given rise to a forfeiture until *Kisch's* case. It was a pity that the mediæval law had not been left in oblivion, for it was quite inappropriate at the present day. This form of pleading did the landlord no harm and the tenant should not suffer by reason of it. His lordship had no hesitation in holding that a denial in a pleading of the landlord's title did not to-day give rise to a forfeiture, and in so far as *Kisch's* case held that it did it should be overruled. The appeal should be allowed.

HODSON, L.J., concurring, said that a general traverse of this kind should not be taken to involve an affirmative contradictory allegation by the tenant that the title in the land was in her or in a stranger. But even if such a denial did cause a forfeiture, the question remained whether this landlord had effectively elected to claim the forfeiture. It was conceded that the landlord must either re-enter or issue a writ for possession, and that the landlord's reply in its original form would not have any greater effect than a notice of intention to re-enter, which would be insufficient. It was argued that by the landlord's reply to the amended defence he had done the equivalent of the issue of a writ of possession, because that reply contained a counter-claim. His lordship was not persuaded that that step was effective. But in any event there was a fatal objection to the plaintiff's claim, since the defence was amended before the reply claiming forfeiture came into existence. That amendment could not be ignored. Once pleadings were amended, what stood before amendment was no longer material before the court. This pleading should not be regarded as any more immutable than any other pleading; and if it were necessary to do so, his lordship would hold that before the landlord had re-entered or taken effective proceedings for re-entry, the defendant, by amending her defence, had removed from it the denial of title which it had previously contained.

ORMEROD, L.J., delivered a concurring judgment. Appeal allowed.

APPEARANCES: *J. H. Hames* and *P. S. A. Rossdale* (neither of whom signed the defence in question) (*Wilders & Sorrell*); *L. G. Scarman*, Q.C., and *Christopher Gibbons* (*Murray, Hutchins and Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 109**

SOCIETIES

The Eighty-eighth Annual General Meeting of the NEWCASTLE UPON TYNE INCORPORATED LAW SOCIETY, being also the one hundred and thirty-second anniversary of its institution, was held at the Society's Library, Newcastle upon Tyne, on Tuesday, 13th January, 1959, Mr. W. H. Gibson, the President, being in the chair. One hundred and one members of the Society were present. A new draft of the Society's Minimum Scale Rules including up-to-date Schedules of the Agreed Building Societies and Compulsory Acquisition Scales was adopted. A resolution was unanimously passed instructing the Society's Standing Committee to prepare an unofficial Scale of Charges for Probate work in normal cases. Attention was drawn during a lively discussion to such Scales as had already been adopted by other Provincial Societies. The following officers were elected for the ensuing year, viz.: President, George Robert Hodnett; Vice-President, John Gould Thompson; Hon. Treasurer, Stanley Grenville March; Hon. Secretary, Thomas Milnes Harbottle; and Hon. Librarian, Philip Standring Layne. For Standing Committee: John Atkinson, William Nixon Craigs, Thomas Tinmouth Houlsby, Harold Ian Bransom, William Stanley Mitcalfe, Edwin Richardson, George Scott, Hugh Leslie Swinburne, Alan Broderick Thompson, Wilfrid Humble Gibson, Ralph Laverton Richmond, and Richard Rutter Crute.

In the evening the Society's Annual Dinner was held in the Old Assembly Rooms, Newcastle upon Tyne, and was presided over by the President, Mr. W. H. Gibson. Three hundred and six members and guests sat down to dinner. Amongst those present were Mr. Justice Glyn Jones, Mr. Justice Thesiger, Mr. Neville Grey, D.S.O., Q.C., Chancellor of the County Palatine of Durham, Judge Cohen, M.C., Judge Drabble, Q.C., and Mr. Leslie Peppiatt, M.C., the President of The Law Society. The toast "The Bench and Bar" was proposed by Mr. Richard Crute and replied to by Mr. Justice Glyn Jones, and the toast of "The President of The Law Society and other Guests" was proposed by Mr. Thomas Magnay and replied to by the President of The Law Society.

REVIEWS

Outlines of Industrial Law. Third Edition. By W. MANSFIELD COOPER, LL.M., of Gray's Inn, Barrister-at-Law, and JOHN C. WOOD, LL.M., of Gray's Inn, Barrister-at-Law. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

There can be no doubt that this is a very valuable work and it must be one of the very few legal text-books of which it can be said that it is has few, if any, serious competitors. As its title suggests, this book is of greatest value to students of that vast subject known as Industrial Law, and for this reason it is more likely to be used by students preparing for, say, the Legal Aspects of Industry and Commerce paper in the final examination of the Institute of Costs and Works Accountants than those seeking call to the Bar or admission on the roll of solicitors. However, articled clerks who, in their final examination, select the paper in which questions are asked on the law relating to master and servant and industrial injuries, would find this work a very useful companion although its scope may be wider than is necessary for their purposes. The author makes no such claim, but in our opinion it would also prove to be a reliable guide to the practitioner who occasionally finds himself confronted with problems in this branch of the law.

It is with great reluctance that we make any criticism of this volume at all, but it has occurred to us that the student might find the work easier to use if more liberal use were made of sub-headings. To take an example, in Chap. III the duties of a master and servant are specified under the general headings "Duties of the Master" and "Duties of the Servant." It is possible that the text would be easier to refer to and more simple to digest if sub-headings such as "Duty to provide work," "Duty to give a testimonial" and "Duty to provide medical attendance" were employed.

This edition includes references to all the recent statutes and cases affecting Industrial Law, including the very important decision of the Court of Appeal in *Dacie* v. *New Merton Board Mills, Ltd.* 1958] 2 W.L.R. 21. It is fully indexed and the usual tables of cases and statutes are included. It is, indeed, a pleasure to welcome the third edition of a book which is sure to assist and please all who have cause to study or refer to its pages.

The Book for Police. By ALAN GARFITT, LL.B. (Lond.), of Lincoln's Inn, Barrister-at-Law. 1958. London: The Caxton Publishing Company, Ltd. Five volumes, £12 17s. 6d. net.

This is a remarkable work and its author, who was advised and assisted by senior police officers and other specialist contributors, and publishers deserve all the compliments which are certain to come their way. It is an immense task to write, compile and produce a work of this size and the result is of great credit to all concerned. In reviewing it, however, our main concern must be its value to the solicitor and it is significant but not in the least surprising that "The Book for Police" was written primarily for "the ordinary policeman" to whom "the lawyer's books of reference are generally inaccessible."

The five volumes of this work have been designed for ease of reference and particular attention has been given to clarity of expression. We imagine that the style of presentation adopted will prove to be helpful and pleasing to members of the police force who are expected to use it, not only for practical purposes, but also to help them with their promotion examinations. Nevertheless, this book cannot replace the well known practice books to which the solicitor constantly has cause to refer and it should be recorded that neither its author nor publishers have suggested that it will become established as a book of reference for the practitioner.

The limitations of the work from the lawyer's point of view are immediately obvious. References to cases are few and far between; in fact, in the complete work, mention is made of a mere two hundred decisions of the courts. Thus in considering the definition of stealing as found in s. 1 of the Larceny Act, 1916, only one case (*R.* v. *McKale* (1868), 11 Cox C.C. 32, an illustration of the art of "ringing the changes" which provides an example of larceny by trick) is cited, while such difficult terms as "takes" and "carries away" are defined in the terms of the statute without reference to judicial authority. As no mention is made of leading cases such as *R.* v. *Hudson* [1943] K.B. 458 and *Moynes* v. *Coopper* [1956] 1 Q.B. 439, it is fair to say that, from the point of view of the practitioner, the work is far from complete. Throughout we are forced to the conclusion that the lawyer with an adequate and up-to-date library is likely to have little use for a work which was not written with the intention of assisting members of the legal profession.

The scope of this new publication is considerable. The first three volumes deal with such diverse subjects as English legal system, police history—organisation and practice, licensing law, evidence and criminal procedure. The section on road traffic may well be the most useful to solicitors especially as it contains the text of all the relevant statutes and statutory instruments. Volume four contains much general information ranging from aeronautical terms to hall-marks and the chief breeds of dogs to slang terms and criminal jargon. It also contains glossaries of legal and medical terms, a section on first aid, an index and tables of statutes, cases and statutory instruments in respect of the complete work. While the index is in itself quite sufficient, it occurs to us that it might add to the reader's convenience if every volume also had its own index.

The final volume comprises an atlas of the world and a road atlas and police district maps of the British Isles. Particulars of international police communications, as well as those in Great Britain, are included, and in this connection a full gazetteer of police forces in the British Isles (including Eire) is made available. An information bureau has been placed exclusively at the disposal of purchasers of "The Book for Police" for the purpose of answering any problems arising in connection with police work or service, and each purchaser is given a booklet containing twelve coupons every one of which entitles him to submit a question for answer by a panel of expert professional advisers. In addition to this, three annual cumulative supplements will be supplied to purchasers free of charge.

The author sets out to provide "a comprehensive library for the instruction and guidance of the police officer throughout his whole career . . . which would enable the lone constable in his village police house as well as his colleague in a more thickly populated area to have to hand all the information necessary for dealing with day-to-day problems, to study for promotion, and to communicate as and when necessary with his counterpart in any other area in the world in general or the United Kingdom in particular." So far as we are in a position to judge, he seems to have accomplished this enormous task adequately and successfully, but we feel bound to conclude that it is probable that comparatively few members of the legal profession will regard this work as indispensable.

Prideaux's Forms and Precedents in Conveyancing. Twenty-fifth Edition in three volumes. Volume I. Edited by T. K. WIGAN, Barrister-at-Law, and I. M. PHILLIPS, Barrister-at-Law. 1958. London: Stevens & Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd. £6 6s. net.

This might be described as the centenary edition of Prideaux: the first edition was in 1853, and there has not been one since 1948. It is right to say at the outset that it fully maintains, and, indeed, it enhances, the high reputation which the book enjoys.

For the benefit of those not familiar with earlier editions it may usefully be said that this volume contains in Pts. I and II, occupying together some 245 pages, a narrative or dissertation upon the various matters covered in this volume, in particular upon contracts of sale, preparation of abstracts, searches, enquiries, contents of conveyances, the effect of covenants, mines and minerals, completions, compulsory sales and stamp duties. Not the least useful feature of this part of the book is the chapter of eleven pages entitled "Hints on Drafting," which can be read with advantage by any and every practitioner. Part III, occupying some 160 pages, contains precedents of special conditions of sale and of agreements for sale by auction or private treaty. These are reproduced in full without abbreviation and are copiously annotated. Part IV, occupying almost 400 pages, contains conveyances on sale and exchanges similarly set out and annotated.

Parts I and II, the narrative, have been very considerably amended and improved in this edition. Not only has a great deal of dead wood been excised, but what remains has been very

largely re-written. We are informed in the preface that this part of the work was the particular responsibility of the late Mr. Wigan, and he and his co-editor have produced an exceptionally clear and very practical exposition of the relevant law.

The variety of forms for inclusion in conveyances on sale and of forms of conveyances on sale is very wide and the various precedents are summarised at the head of each chapter in a manner which makes it convenient to find what is required. It is good to see that those forms have been modernised in a sense that (*inter alia*) recitals are numbered and deeds are referred to according to their functions and not referred to as indentures, whether indented or not. The index and other apparatus are of a high standard, and your reviewer has not detected any misprint save only that something peculiar has happened to the exposition " Stamp Duties," since the reader is throughout the book referred to the last rather than the first page of the chapter wherein it is to be found. This is a very well produced edition which will ease the way of the practical conveyancer.

Negligence in Delict. Fourth Edition. By the late J. C. MACINTOSH, B.A., LL.B., Advocate of the Supreme Court of South Africa, and C. NORMAN-SCOBLE, B.A., LL.B., Advocate of the Supreme Court of South Africa. 1958. London: Sweet and Maxwell, Ltd., agents for Juta and Co., Ltd., Capetown, Wynberg and Johannesburg. £6 net.

There are certain differences between taking a holiday abroad and reading a book on South African law. In the case of the holiday one enjoys the contrasts but on the whole one is glad that one is a mere observer, not caught up in the web of existence in foreign lands and glad that their customs do not apply in England with perhaps here and there an exception. But in the case of a book on a different legal system one looks for the similarities and wonders to what extent they could be imported at least as arguments if not as authorities.

Is not the lawyer's appetite insatiable for precedents and guides? The latest book, the most recent decision, each have their own aura of expectation and (in a mild way no doubt) of excitement.

Certainly this work on negligence is of interest by way of contrast and comparison with English law. There is an undercurrent of authority in English decisions and throughout the work they are seen to be quoted; but Roman law has probably an even stronger influence. At the same time local decisions are preponderant as is to be expected.

This edition is a little bigger than the previous edition due partly to the introduction of a law of contribution for contributory negligence. Practically one half of the book (Part II in fact) is devoted to running-down cases and collisions; a most appropriate proportion in modern days. Part I covers not only general principles but also has chapters on master and servant, medical practitioners, municipalities, carriers, water, fire and firearms and the like.

This is, for the South African practitioner, an indispensable leading work on a matter of constant importance. For those of other countries it is a valuable work of reference and comparison. And on the whole we conclude that their problems in this field are, as we should expect, the same as here; their means of solution not so very different. We particularly commend the section on road traffic with its detailed study of all aspects of road danger.

Oke's Magisterial Formulist. Edited by J. P. WILSON, Solicitor and Clerk to the Justices for the County Borough of Sunderland. 1958. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £7 7s. net.

The publication of this edition, seven years after its predecessor, is fully justified by the enactment in the intervening years of a variety of statutes such as the Magistrates' Courts Acts, 1952 and 1957, the Licensing Act, 1953, the Food and Drugs Act, 1955, the Road Traffic Act, 1956, the Sexual Offences Act, 1956, and the Affiliation Proceedings Act, 1957. Forms relating to proceedings under these and other recent statutes, as well as those of earlier vintage, appear clearly and methodically set out. Particularly useful is the linking of titles in this edition with those in Stone's Justices' Manual. No one concerned with drafting documents for use in magistrates' courts can afford to be without this work which covers relevant legislation up to 1st August, 1958.

Chapman's Five Hundred Points in Club Law and Procedure. Thirteenth Edition. Edited by FRANK R. CASTLE. 1958. London: Working Men's Club and Institute Union, Ltd. 8s. 6d. net.

In reviewing a previous edition of this work we wrote that it " is a convenient résumé of club law. It is so arranged that any particular point which is causing difficulty can be readily found, and valuable features are the chapter on Licensing Act and Clubs, which states shortly how the Licensing Act affects clubs, and the special articles on Assessments, Dramatic and Musical law, etc." After perusing the new edition we have found no reason to revise our previous opinion.

Current Legal Problems, 1958. Volume II. Edited by GEORGE W. KEETON and GEORG SCHWARZENBERGER. 1958. London: Stevens & Sons, Ltd. £1 15s. net.

Last year's annual collection of lectures sponsored by the Faculty of Laws at University College, London, includes, besides the public lectures of the Session 1957–58, a special address by Mr. W. O. Hart on Local Government in London. In this the Clerk of the London County Council traces the growth historically of the administrative county from the days when the City Corporation alone was possessed of the duties and powers appropriate to a capital centre and was surrounded by areas with which it had close connections but no common administrative features. The emergence of the county from various *ad hoc* bodies is described, and there is a final glance at the problems of recent expansion which fits in topically with the present move towards reorganisation in the Greater London area.

Of the other lectures, one that is of particular interest to solicitors is the presidential address to the Bentham Club delivered by Sir Edwin Herbert on the subject of education for the legal profession. Present-day issues are also raised in Trial by Newspaper, a study in which Dr. George J. Webber examines the power of the press in England in relation to pending trials and the control of that power by the courts, and after comparative references to Scotland and Northern Ireland, deals with the problems of reform. Mr. Prevezer follows up a representation made by the Belfast meeting of the Society of Public Teachers of Law for the consideration of criminal law reform. He discusses the Model Penal Code formulated by the American Law Institute with particular reference to the general principles of criminal liability, and finishes with a more specific treatment of the provisions of the code on theft.

There are nine other lectures on legal topics of the day. It is both interesting and useful to have them available in this handy form.

Introduction to Shipping Law. By RONALD BARTLE, B.A. (Cantab.), of Lincoln's Inn, Barrister-at-Law. With a Foreword by EUSTACE ROSKILL, Q.C. 1958. London: Sweet & Maxwell, Ltd. £1 10s. net.

In a foreword to this book Mr. Eustace Roskill, Q.C., tells us that it originated in a series of lectures given by the author at the City of London College for the benefit of young men seeking to make their careers in the offices of shipping companies or ship brokers.

It is meant to give an insight into the working of the law of affreightment and the chartering of ships, including problems that arise in loading and unloading, general average, liens and the like.

How often the shipping clerk deals with this type of legal problem your reviewer does not know, but even if in practice he usually does what his superiors tell him is usually done, or usually uses printed forms for this, that or the other type of contract, a study of this book will give him a keener understanding of the basis of the practice in his office and the use of various clauses in contracts relating to shipping.

Notwithstanding its small size compared with the leading works on this subject one is provided with all the important principles of law and a full measure of extracts from leading decisions. Any law student or practitioner wanting a book on the fundamentals of this branch of law will do well to read this work. There are also useful extracts from relevant statutes and the York–Antwerp rules are given in an Appendix.

The Lawyer's Companion and Diary, 1959. Edited by W. H. REDMAN and LESLIE C. E. TURNER. 1958. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd. Day to a page edition, £1 10s. net; week at an opening, £1 5s. net.

Besides the diary, the Lawyer's Companion and Diary contains particulars of barristers, solicitors and legal officers, and much information on costs, duties and taxes, solicitors' accounts, investment of trust funds, intestates' estates, brokers' commission and many other matters.

Butterworth's Costs. Sixth Cumulative Supplement. Edited by B. P. TREAGUS, Principal Clerk, Supreme Court Taxing Office, and H. J. C. RAINBIRD, of the Supreme Court Taxing Office. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

This supplement runs to over 500 pages and brings the law generally up to 31st July, 1958, although it also includes amendments made by R.S.C. (No. 2), 1958, which came into force on 1st September, 1958.

Spicer & Pegler's Income Tax and Profits Tax. Twenty-third Edition. By H. A. R. J. WILSON, F.C.A. 1958. London: H. F. L. (Publishers), Ltd. £1 10s. net.

There must be many professional people whose first introduction to the law and practice of taxation was through an early edition of this work. Its attractive discursive style and the order in which its subject is presented justify its great popularity. The latest edition, by Mr. Wilson, will certainly enhance the reputation which the work has achieved by its earlier editions. The book is comprehensive and up to date. The reader is rightly introduced to the fundamental principles of British taxation in the first two chapters. Particularly at the beginning of the second chapter there are five consecutive paragraphs whose headings probably refer to the five most original and important features of our system of taxation. These are "The Income Tax Year," "Statutory Income," "The Rate of Tax" (this refers to the standard rate), "The Five Schedules" and "The Collection of Tax at the Source."

Unfortunately the presentation of British taxation in the form of a narrative means that the book is not as useful as it might be to the practitioner. Once one has grasped the essential features of taxation and turns to the practical problems which arise from day to day on some particular point of taxation law, the subject inevitably resolves itself into an enormous number of special cases. Indeed, any practitioner knows that the hundreds of sections to be found in the Income Tax Act of 1952 and the various Finance Acts each refer to a particular situation, in which a knowledge of the general principles of income tax and the structure of the relevant legislation is not of itself sufficient. "Spicer and Pegler" does rather give the impression that the legislation and the tax cases are a gloss on the real essentials of taxation. Part of the fascination of British taxation is that a reasonable, just and consistent system of taxation is defined by an astonishing mass of specialised enactments and cases. "Spicer and Pegler" does not make any real attempt to put across this aspect of the subject.

In short, the book is comprehensive and matter of fact, and extraordinarily readable. The merits of the work far outweigh its deficiencies and at its price it is certainly well worth acquiring.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Agriculture (Small Farmers) Bill [H.C.] [22nd January.
Bootle Corporation Bill [H.L.] [21st January.
Calvinistic Methodist or Presbyterian Church of Wales (Amendment) Bill [H.L.] [21st January.
City of London (Various Powers) Bill [H.L.] [21st January.
Domicile Bill [H.L.] [22nd January.
To amend the law relating to domicile.
Falmouth Docks Bill [H.L.] [21st January.
Glamorgan County Council Bill [H.L.] [21st January.
Gloucestershire County Council Bill [H.L.] [21st January.
Halifax Corporation Bill [H.L.] [21st January.
Highways Bill [H.L.] [20th January.
To consolidate, with Amendments, certain enactments relating to highways, streets and bridges in England and Wales, including certain enactments commonly contained in Local Acts, and to make consequential amendments of the Common Law.
Joseph Rowntree Memorial Trust Bill [H.L.] [21st January.
Lancaster Corporation Bill [H.L.] [21st January.
Lee Valley Water Bill [H.L.] [21st January.
London County Council (General Powers) Bill [H.L.] [21st January.
Middlesex County Council Bill [H.L.] [21st January.
Milford Haven (Tidal Barrage) Bill [H.L.] [21st January.
Railway Clearing System Superannuation Fund Bill [H.L.] [21st January.
Round Oak Steel Works (Level Crossings) Bill [H.L.] [21st January.
Royal Wanstead School Bill [H.L.] [21st January.
South Wales Transport Bill [H.L.] [21st January.
Tees Conservancy Bill [H.L.] [21st January.
Thames Conservancy Bill [H.L.] [21st January.
Transport (Borrowing Powers) Bill [H.C.] [22nd January.

Read Second Time :—

Navy, Army and Air Force Reserves Bill [H.C.] [22nd January.
Post Office Works Bill [H.C.] [20th January.

Read Third Time :—

Deer (Scotland) Bill [H.L.] [22nd January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

European Monetary Agreement Bill [H.C.] [21st January.
To make certain provisions of a financial nature in connection with the operation of the European Monetary Agreement, and for purposes connected therewith.
Malta (Letters Patent) Bill [H.C.] [21st January.
To remove the limitation of Her Majesty's power to revoke or amend the Malta (Constitution) Letters Patent, 1947.
Restriction of Offensive Weapons Bill [H.C.] [21st January.
To amend the law in relation to the making and disposing of flick knives and other dangerous weapons.

Read Second Time :—

Electricity (Borrowing Powers) Bill [H.C.] [20th January.

B QUESTIONS

DOCUMENTS (CROWN PRIVILEGE)

The ATTORNEY-GENERAL declined to set up a committee to review the law with regard to Crown privilege of documents. The law and practice had been reviewed in 1956, when the Government concluded that no amendment of the law was required but that the current practice should be modified. An announcement to this effect was made by the Lord Chancellor in the Lords on 6th June, 1956, and the question was fully debated in the Commons. He could not accept statements that the existing system produced great injustice and was largely condemned by the legal profession, or that it would be much better, in doubtful cases, if it were left to the judge rather than the Minister to decide what documents should be produced in court. [20th January.

ROAD ACCIDENTS (ANIMALS)

The ATTORNEY-GENERAL declined to introduce legislation to define the liability of farmers in the event of accidents on the highway involving motorists and stock straying on the highway after dark. The law was sufficiently clear, decided cases having established beyond question that occupiers of adjacent land were under no duty to prevent animals from escaping on to the highway. It might well be that, under the law as it now stood, a motorist could not recover if he collided with an animal on the highway. [20th January.

INCOME TAX (MEAL VOUCHERS)

The CHANCELLOR OF THE EXCHEQUER said that it depended on the facts of the case whether meal vouchers under a particular scheme were taxable emoluments, but the Inland Revenue regarded the majority of vouchers in use to-day as taxable. There was, however, a long-standing practice under which vouchers had not been taxed, and he proposed that this extra-statutory concession should be continued for the time being, subject to the conditions that (*a*) vouchers must be non-transferable and used for meals only, (*b*) where any restriction was placed on their issue to employees they must be available to lower-paid staff, and (*c*) the value of vouchers issued to an employee must not exceed 3s. for each full working day. The value of any vouchers, or part of a voucher, which did not comply with these conditions would be taxed as from the beginning of the next income tax year. The whole question would be kept under review. [20th January.

LISTER *v.* ROMFORD ICE AND COLD STORAGE CO., LTD.

The MINISTER OF LABOUR, in a statement on the report of the Inter-Departmental Committee set up to study the implications of the judgment in *Lister* v. *Romford Ice and Cold Storage Co., Ltd.* [1957] A.C. 555 (see p. 60, *ante*) said that the Government accepted the conclusion of the committee and did not propose, therefore, to take any further action at present. [21st January.

BUILDING BYELAWS

Mr. BROOKE said that the present system of locally made building byelaws could not be replaced by a single set of centrally-made building regulations without legislation amending the Public Health Acts. He agreed that the desirability of the change ought to be considered, and proposed to invite the views of the local authority associations, the London County Council, the interested professional bodies and the building industry before reaching a decision. [21st January.

UNIT TRUSTS

The PRESIDENT OF THE BOARD OF TRADE said that he was ready to consider any recommendation, either from unit trusts or from the public, for the improvement of legislation in this field. Existing legislation appeared to afford adequate safeguards. Many aspects were covered, including the calculation of the price of units, management charges, the wording of advertisements, the audit of accounts and their circulation to unit holders. [22nd January.

RESTRICTIVE TRADE PRACTICES

The PRESIDENT OF THE BOARD OF TRADE said that the Registrar was responsible for bringing to the attention of the Restrictive Practices Court any breaches of undertakings to or injunctions by the court of which he became aware. No follow-up machinery was needed as regards agreements stated to be abandoned before registration, other than that provided in s. 14 of the Restrictive Trade Practices Act, 1956. If the Registrar had any reason to believe that a restrictive practice existed and had not been registered with him he could require the details to be given to him. No doubt those who thought such a practice existed would approach the Registrar. [22nd January.

STATUTORY INSTRUMENTS

Agricultural Land Tribunals and Notices to Quit Order, 1959. (S.I. 1959 No. 81.) 1s. 5d.

Agriculture Act, 1958 (Appointed Day) (England and Wales) Order, 1959. (S.I. 1959 No. 80 (C.2).) 4d.

Agriculture (Areas for Agricultural Land Tribunals) Order, 1959. (S.I. 1959 No. 83.) 5d.

Agriculture (Control of Notices to Quit) (Service Men) Order, 1959. (S.I. 1959 No. 82.) 5d.

[These regulations are referred to in a Current Topic, at p. 80, *ante*.]

Airways Corporations (General Staff, Pilots and Officers Pensions) (Amendment) Regulations, 1959. (S.I. 1959 No. 42.) 6d.

Composite Sugar Products (Surcharge—Average Rates) Order, 1959. (S.I. 1959 No. 73.) 5d.

Execution of Sentences of Death (Navy) Regulations, 1959. (S.I. 1959 No. 62.) 8d.

Hanford-North of Hanchurch Trunk Road Order, 1959. (S.I. 1959 No. 71.) 4d.

Industrial Insurance Companies (Forms) Regulations, 1959. (S.I. 1959 No. 60.) 5d.

Legal Advice Regulations, 1959. (S.I. 1959 No. 47.) 7d.

Legal Aid and Advice Act, 1949 (Commencement No. 6) Order, 1959. (S.I. 1959 No. 46 (C.1).) 4d.

[An article dealing with these regulations appears at p. 81, *ante*.]

London Traffic (40 m.p.h. Speed Limit) (Amendment) Regulations, 1959. (S.I. 1959 No. 87.) 5d.

London Traffic (Prescribed Routes) (Bethnal Green) (Amendment) Regulations, 1959. (S.I. 1959 No. 88.) 4d.

London Traffic (Prescribed Routes) (Ealing) Regulations, 1959. (S.I. 1959 No. 89.) 5d.

London Traffic (Wembley) (Restrictions on Driving) Regulations, 1959. (S.I. 1959 No. 90.) 4d.

Louth Water Order, 1959. (S.I. 1959 No. 48.) 5d.

Ludlow Rural District Water (Seifton Pool) Order, 1958. (S.I. 1959 No. 75.) 5d.

Ludlow Rural Water Order, 1958. (S.I. 1959 No. 74.) 5d.

Draft **Merchandise Marks** (Imported Goods) No. 1 Order, 1959. 5d.

Naval Detention Quarters Rules, 1959. (S.I. 1959 No. 61.) 1s. 5d.

Newark Corporation Water Order, 1958. (S.I. 1958 No. 2280.) 5d.

Reserve and Auxiliary Forces (Agricultural Tenants) Regulations, 1959. (S.I. 1959 No. 84.) 5d.

[These regulations are referred to in a Current Topic at p. 80, *ante*.]

Road Vehicles (Index Marks) (Amendment) Regulations, 1959. (S.I. 1959 No. 86.) 5d.

Stopping up of Highways (City and County Borough of Birmingham) (No. 1) Order, 1959. (S.I. 1959 No. 32.) 5d.

Stopping up of Highways (City and County of Bristol) (No. 1) Order, 1959. (S.I. 1959 No. 33.) 5d.

Stopping up of Highways (County of Gloucester) (No. 1) Order, 1959. (S.I. 1959 No. 31.) 5d.

Stopping up of Highways (County of Kent) (No. 1) Order, 1959. (S.I. 1959 No. 58.) 5d.

Stopping up of Highways (City and County Borough of Liverpool) (No. 1) Order, 1959. (S.I. 1959 No. 53.) 5d.

Stopping up of Highways (London) (No. 2) Order, 1959. (S.I. 1959 No. 68.) 5d.

Stopping up of Highways (London) (No. 3) Order, 1959. (S.I. 1959 No. 59.) 5d.

Stopping up of Highways (London) (No. 6) Order, 1959. (S.I. 1959 No. 69.) 5d.

Stopping up of Highways (County of Sussex, West) (No. 1) Order, 1959. (S.I. 1959 No. 54.) 5d.

Stopping up of Highways (County of Warwick) (No. 1) Order, 1959. (S.I. 1959 No. 55.) 5d.

Stopping up of Highways (County of Warwick) (No. 2) Order, 1959. (S.I. 1959 No. 56.) 5d.

Stopping up of Highways (Warwickshire) (No. 1) Order, 1955 (Revocation) Order, 1959. (S.I. 1959 No. 67.) 4d.

Stopping up of Highways (County of York, West Riding) (No. 1) Order, 1959. (S.I. 1959 No. 70.) 5d.

Sugar and Molasses (Rates of Surcharge and Surcharge Repayments) Order, 1959. (S.I. 1959 No. 72.) 5d.

West Ashford Rural District (New Streets) Order, 1959. (S.I. 1959 No. 57.) 4d.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, *and accompanied by the name and address of the sender on a separate sheet, together with a* stamped addressed envelope. *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.*

Retirement from Trust—Vesting of Mortgages in Remaining Trustees

Q. *A* died possessed of certain first mortgages; he appointed *B*, *C* and *D* to be his executors and trustees; *A* created a trust by will of his residuary estate including the mortgages; *B*, *C* and *D*, at the close of their executorship, made written declarations to the effect that the mortgages were from then on vested in themselves as trustees; *B* has executed a deed of retirement from the trust; it is the wish of all parties that the benefit of the mortgages be vested from now on in *C* and *D* only as trustees; is that the position now, and, if not, what is necessary to attain that end, please?

A. The written declaration was undoubtedly effective to vest the mortgages in *B*, *C* and *D* as trustees rather than as executors. The deed of retirement is fully effective by the Trustee Act, 1925, s. 39 (1), since two trustees are left, to constitute *C* and *D* the sole remaining trustees. By the Trustee Act, 1925, s. 40 (2), if the deed did not include a vesting declaration it is nevertheless to operate as if it had; therefore in our opinion the mortgages are vested in *C* and *D* as trustees and nothing further remains to be done.

Sale of Property of Private Company by Majority Shareholder's Executor

Q. *W*, Ltd., a private limited company incorporated under the 1929 Act, owns Blackacre. There were formerly two shareholders of *W*, Ltd., *X* and *Y*, who were also directors of the company, both of whom are now dead. *Y*, the majority shareholder, has appointed *Z* executor, and *Z* wishes to sign a contract for the sale of Blackacre. After probate of *Y's* will has been obtained and *Y's* shares registered in *Z's* name as executor of *Y* can *Z* call a meeting of *W*, Ltd., in his capacity as executor and then vote himself a director with a view to signing the contract, or must *Y's* shares be first transferred by *Z* as executor of *Y* to himself personally? Representation has not yet been taken out to *X's* estate. Table A applies to the company.

A. On the death of a member of a company his personal representative may either register the probate allowing the shares to remain in the name of the deceased but under his control, etc., or he may transfer the shares into his own name, thus becoming himself a member of the company. He may do the latter whether or not he is beneficially entitled to the shares: the company is not concerned with that. Reference to para. 2 of Table A to the Companies Act, 1929, shows that he must take the latter course before he can summon any meeting of the company or vote at any meeting when it has been summoned.

Demise in Home-made Will—Whether a Settlement

Q. A testatrix in a home-made will devised to "My son *X* my freehold cottage and garden but my daughter *Y* who is now residing there occupies it until her death only." Does this constitute a settlement within the meaning of the Settled Land Act, 1925, and, if not, what is *Y's* position at law?

A. In our opinion, this quite clearly constitutes a settlement within the Settled Land Act, 1925, and *Y* is the tenant for life entitled to have the legal estate vested in her as such.

Payment of Death Duties by Surrender of Victory Bonds

Q. We appreciate that death duties may be paid by the surrender of 4 per cent. Victory Bonds at par. These are now quoted at around 94. We should be glad to know whether these bonds must form part of the estate of the deceased or whether it is possible for them to be purchased after the death by the executors.

A. The Victory Bonds, if they are to be accepted in payment of duty, must have formed part of the estate of the deceased for a period of not less than six months before the death.

NOTES AND NEWS

Miscellaneous

The President of The Law Society, Mr. Leslie E. Peppiatt, gave a luncheon party on 19th January at 60 Carey Street, W.C.2. The guests were: Lord Radcliffe, Mr. Cameron F. Cobbold, Sir Frederick Hoyer Millar, Sir George Coldstream, Sir Charles Wheeler, Mr. J. M. L. Evans, Mr. G. F. Pitt-Lewis, Sir Cullum Welch and Sir Thomas Lund.

Advisory Council on Public Records

The Lord Chancellor has appointed the following to serve, under the chairmanship of the Master of the Rolls, as members of the Advisory Council on Public Records: The Hon. Denys Buckley, M.B.E.; Professor J. G. Edwards, D.Litt.; Sir David Evans, O.B.E., D.Litt.; Mr. Eric Fletcher, LL.D., M.P.; Professor H. J. Habakkuk; Mr. Kenneth Pickthorn, Litt.D., M.P.; and Mr. R. Somerville, C.V.O. Under the Public Records Act, 1958, which came into force on 1st January, this council is to advise the Lord Chancellor on all matters concerning public records and, in particular, on those aspects of the work of the Public Record Office which affect the public.

Wills and Bequests

Mr. Arthur Frank Clark, solicitor, of Reading, left £42,217 net.

Mr. William Joseph Ellis, retired solicitor, of Southport, left £44,159 (£43,938 net).

Mr. Alexander W. Johnson, retired solicitor, of Five Ashes, Sussex, left £24,420 net.

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